

Exhibit I

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 19-11845-shl

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5 In the Matter of:

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7 BSG RESOURCES LIMITED (in administration) and WILLIAM

8 CALLEWAERT and MALCOM COHEN, as JOINT ADMINISTRATORS,

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10 Debtors.

11 - - - - - x

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13 United States Bankruptcy Court

14 One Bowling Green

15 New York, NY 10004

16

17 June 13, 2019

18 2:16 PM

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21 B E F O R E :

22 HON SEAN H. LANE

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: K.HARRIS

1 HEARING re Doc. #10 Motion To File Under Seal Re: Affidavit
2 Of Peter Harold Driver

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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

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3 DUANE MORRIS LLP

4 Attorneys for the Joint Administrators

5 1540 Broadway

6 New York, NY 10036

7

8 BY: FREDERICK D. HYMAN

9

10 DUANE MORRIS LLP

11 Attorneys for the Joint Administrators

12 222 Delaware Avenue, Suite 1600

13 Wilmington, DE 19801

14

15 BY: JARRET P. HITCHINGS

16

17 WILLKIE FARR & GALLAGHER LLP

18 Attorneys for the Debtor

19 787 Seventh Avenue

20 New York, NY 10019

21

22 BY: BENJAMIN P. MCCALLEN

23

24

25

1 CLEARY GOTTlieb STEEN & HAMILTON LLP

2 Attorneys for Vale

3 One Liberty Plaza

4 New York, NY 10006

5
6 BY: LISA M. SCHWEITZER

7 JONATHAN I. BLACKMAN

8
9
10 ALSO PRESENT TELEPHONICALLY:

11
12 MALCOLM COHEN

13 SAM DINGLE

1 P R O C E E D I N G S

2 THE COURT: We are here this afternoon for BSG
3 Resources Limited, the Chapter 15 case to a follow-up on our
4 conversation at the first day hearing about the record. So
5 let me get appearances from Counsel.

6 MR. HYMAN: Good morning, Your Honor. Rick Hyman
7 from Duane Morris on behalf of the joint administrators.
8 With me is my colleague Jarret Hitchings.

9 MS. SCHWEITZER: Good afternoon, Your Honor. Lisa
10 Schweitzer from Cleary Gottlieb for Vale with my partner Jon
11 Blackman.

12 MR. MCCALLEN: Good morning, Your Honor.

13 MS. SCHWEITZER: Afternoon.

14 MR. MCCALLEN: Good afternoon, Your Honor.
15 Benjamin McCallen, Wilkie Farr & Gallagher on behalf of
16 George Soros and the Open Society Entities.

17 THE COURT: All right. Good afternoon to you all.
18 So I think when we last got together, there were a number of
19 things that we talked about, but one of them was the state
20 of the record, in particular, the affidavit that was filed
21 by Peter Harold Driver in proceedings in Guernsey. And the
22 roughly thousand some odd pages that went with it, and the
23 fact that they're all under seal.

24 And the motion to seal that was filed that I was
25 not in a position to grant, given the fact that it was

1 unclear to me how or why it got sealed in Guernsey, even
2 putting aside the question of how one would be able to
3 establish the requirements for Chapter 15 recognition with
4 all that under seal.

5 So I think that's -- was the backdrop for our
6 discussion and our follow-up get together today, which is to
7 talk about that as kind of a threshold gating issue.

8 MR. HYMAN: Thank you, Your Honor. We appreciate
9 the time you've made for us this afternoon, on again,
10 somewhat short notice from the hearing last week. You will
11 recall this Chapter 15 case from our perspective is
12 particularly complex back story, but for a relatively simple
13 purpose, and that is to protect what ultimately may prove to
14 be the most valuable asset in BSG resources, located within
15 the United States, which is the litigation that has
16 commenced against George Soros.

17 That asset, from the Debtor's perspective, from
18 the joint administrator's perspective is thought to be under
19 sieged by Valet by virtue of its actions in the United
20 States, to seek a petition recognizing the arbitration award
21 in the United States --

22 THE COURT: Well, I know that. We're -- but today
23 is -- let's talk about the thousand pages before we get to
24 any and all of that. We -- I know we'd spoke about that,
25 but we can't really meaningfully make any progress and have

1 the merits all get teed up until we actually talk about what
2 the record is. So where are we on that?

3 MR. HYMAN: So the declaration of Malcolm Cohen
4 Your Honor is correctly relied on or cited to certain
5 provisions of the Peter Driver affidavit, which had been
6 filed in connection with the recognition or the
7 administration application in Guernsey back in February '18.

8 That, we sought in connection with the Malcolm
9 Cohen declaration permission to file the Driver affidavit
10 under seal. And the Driver affidavit has not been filed.
11 The Driver affidavit exhibits have not been filed. We were
12 hoping that we could get Your Honor's review of those
13 documents so that in connection with certain of the
14 provisions -- with certain of the provisions in connection
15 with the Malcolm Cohen affidavit, it did point to the Driver
16 affidavit in some instances, all of which were publicly
17 available information that Your Honor would have a touch
18 point to review that.

19 THE COURT: Right. But I think what I said in
20 response to that was there hasn't been any justification for
21 sealing the information. So while all I heard was, and I
22 frankly, I think I heard stuff that wasn't actually filed
23 anywhere in terms of background, but the best I got was that
24 it was under seal in Guernsey, but I don't understand if
25 that was something done at the request of the Debtors,

1 meaning that the Debtors -- it wasn't compelled by anything
2 other than a request.

3 I don't know what the standard is in Guernsey. I
4 don't know why it was sealed. I had an order, but the order
5 wasn't any more illuminating than the motion that was filed,
6 and that's where we left. So starting off with what you
7 want to do is nice, but I'm not any further wrong in being
8 able to do anything in connection with your motion to seal.

9 MR. HYMAN: I appreciate that, Your Honor. In
10 connection with the proceedings in Guernsey, certainly the
11 joint -- I apologize -- the administration order was made by
12 the directors of the Board of BSG Resources. They did make
13 a request that the file be submitted under seal.

14 The judge, under those circumstances, accepted
15 that it is a proceeding, and we believe it is an appropriate
16 proceeding or the proper jurisdiction where in the event
17 that there are any issues as to whether that is --

18 THE COURT: No, we're not getting anywhere, and I
19 can deny your motion for lack of a showing, if you want me
20 to do that.

21 MR. HYMAN: I don't want you to do that, Your
22 Honor.

23 THE COURT: We just were -- you're not telling me
24 anything that I didn't hear a week ago, which I found to be
25 alarmingly insufficient. Yes, I know they asked for it to

1 be under seal. Yes, I know there's a sealing order. This -
2 - yes, the sealing order says practically nothing other than
3 it's sealed.

4 I'm not going to permit a party to bootstrap
5 sealing in the United States proceeding, which was
6 presumably open, by virtue of the fact that they requested
7 it somewhere else under whatever standard for whatever
8 reason. The closest thing I got was a reference to
9 confidential business information, but none of that was
10 justified or expounded upon.

11 So all you've done so far is repeat everything I
12 already know. My understanding of the break between when we
13 last got together and now was that additional things were
14 supposed to be done. You were supposed to look at whether
15 it was necessary to seal this entire record, what the
16 Guernsey law is. I didn't see. Was there any additional
17 filing to explain anything?

18 MR. HYMAN: The -- just our supplemental filing
19 with the affidavit of our counsel and Guernsey, who is on
20 the phone today.

21 THE COURT: All right. So what else do you want to
22 tell me?

23 MR. HYMAN: Your Honor, to the -- look, there --
24 the information that was used in connection with preparation
25 of the Malcolm Cohen declaration by reference to the Driver

1 affidavit is information that is generally publicly
2 available, and certainly known by the drug administrators
3 given their more than a year efforts working in connection
4 with this bankruptcy, in connection with this
5 administration.

6 We are prepared, Your Honor, to share with you a
7 redacted version of the declaration or the Driver affidavit
8 and assorted exhibits, where we would be comfortable, and we
9 have sought authorization from the Guernsey bankruptcy, the
10 Guernsey, the (indiscernible) part of Guernsey, to propose
11 that redacted version be filed publicly in the United
12 States.

13 That redacted version would support every
14 reference in the affidavit or the declaration of Malcolm
15 Cohen, used or filed on the first day of these cases, Your
16 Honor. Alternatively, if Your Honor is not of the mind to
17 go through a revised version or a redacted version of the
18 declaration and exhibits, and I will say that --

19 THE COURT: Well, I am the -- so the notion is that
20 -- so what I have that was filed after we got together was
21 the declaration of Jonathan (indiscernible), right? So
22 that's what you submitted. And then, I saw that -- and that
23 was filed on the 12th at 11:30.

24 And then, I saw something that's at Docket 21, I
25 also saw there was opposition to joint administrator's

1 motion regarding the file on the (indiscernible) seal that's
2 filed on the 12th.

3 MR. HYMAN: The Barclay papers, Your Honor, were
4 filed on behalf of Valet.

5 THE COURT: Right, right. But have I seen anything
6 from you?

7 MR. HYMAN: We filed a short supplement, Your
8 Honor, at Docket 16, and followed that with the declaration
9 of Matthew Newman, who is Guernsey counsel, which is at
10 Docket 17.

11 THE COURT: All right.

12 MR. HYMAN: We are prepared today to walk the
13 Court through a version of the declaration or the affidavit
14 and exhibits that significantly narrows the scope of
15 information that is concerning to the Guernsey Court and the
16 joint administrators.

17 THE COURT: So yeah, so the concern I have with
18 this is that what I think (indiscernible) said, there's a
19 lot in here that says the purpose of this declaration is to
20 address the sure point about the types of information that
21 in my experience at the Guernsey Court would agree to keep
22 sealed on the Court file, which seems to suggest that it was
23 done at the request of the Debtors.

24 MR. HYMAN: I don't think there's any dispute that
25 that's the case, Your Honor.

1 THE COURT: Right. And I don't know what I have is
2 -- will often be commercially -- the information put before
3 the Guernsey court will often be commercially sensitive, as
4 it will relate to the company's financial position,
5 strategy, proposed administrators. (indiscernible) to put
6 this information before the Guernsey Court in order to
7 fulfill the threshold test.

8 But it basically talks about what the Guernsey
9 Court can do, and what the authority is for that. The
10 problem is, I don't have anything that applies it to this
11 case, right? So I don't really know other than the entry of
12 an order, why it was done. And again, I'm concerned that
13 there may be a request made of a foreign court that says I'm
14 making the request, the standard is lower, maybe it's done
15 as a matter of course.

16 And then, that is used to justify sealing here
17 without really a substantive basis, other than a request.
18 And this just talks generally about what the procedures are,
19 which is why I say I sort of find myself in the same
20 position that I was when I first came out. Obviously, they
21 considered the application to keep it under seal.

22 MR. HYMAN: Of course.

23 THE COURT: Obviously, they granted it, but I don't
24 have anything and there's a discussion about, well, it's
25 often done because there's something confidential. I still

1 don't have any more information than I did when this first
2 came in front of me.

3 MR. HYMAN: Yeah, I think Your Honor, it's evident
4 on its face that it was proposed by the Debtor. The Debtor
5 has proposed that it be filed under seal, gave proper
6 reasons for it. I think it --

7 THE COURT: But what are the proper reasons?

8 MR. HYMAN: Under the circumstances of the joint
9 administrators, I can't speak for Matthew Newman, who is on
10 the line today because I wasn't in -- I wasn't at that
11 administration hearing of course.

12 THE COURT: But you can't come to a US Court and
13 ask for something to stay sealed without being able to tell
14 me why it should be sealed.

15 MR. HYMAN: I think, just for reference, I think
16 that what we are asking the Court to do is to permit us to
17 file it under seal. I don't believe that we have filed the
18 papers as they are today.

19 THE COURT: Whatever. The question is a
20 justification for doing so. You're sort of talking around
21 the issue, which is to say that we asked for it, they
22 granted it, here are some things and considerations that
23 people will think about, but I still don't know why it was
24 granted in this case. This doesn't address that issue, it
25 just addresses generically procedures. And I already know

1 that they granted it. I saw the order and there was a
2 reference in the motion to commercially sensitive
3 information. But I don't know what the justification was.

4 I don't know if there's an automatic. So I've had
5 other cases where folks have said you can't use it here
6 without seeking relief in the foreign court. But if you've
7 asked for the relief as opposed to its automatically being
8 done under some statutory provision, presumably you could
9 ask for the relief and get it granted. So I don't -- I
10 haven't gotten it -- any information about the merits of why
11 it was sealed. And it is your burden to justify it.

12 MR. HYMAN: Yeah, I appreciate it, Your Honor. I
13 don't know that the concern entirely is that it was sealed,
14 and that is our only justification. I think that we are
15 using -- would like to use that for the benefit of the Court
16 background to provide some color on the origination of the
17 administration proceeding in Guernsey. That's that it is
18 not critical to our argument. It is not critical to --

19 THE COURT: I know, but you want me to seal it, and
20 there's a separate statute in the Bankruptcy Court that
21 provides a standard for sealing, and you've got to justify
22 it because proceedings to the United States are
23 presumptively open.

24 MR. HYMAN: Well, we want you to authorize us to
25 file it under seal. In the event that Your Honor is not

1 willing to authorize us to file it under seal, I think that
2 what we would be ready to do is very promptly file a revised
3 affidavit of -- or a declaration of Malcolm Cohen that
4 didn't rely on that, that was -- we don't believe for a
5 second that that is going to eliminate any discovery issues
6 that we have with Valet.

7 Certainly, we'll have discovery issues with Valet,
8 probably any day now. It would not surprise us for Valet to
9 seek disclosure of the documents that are attached to the
10 Driver affidavit.

11 THE COURT: And so, we'll end up right back here,
12 where we are. So that's what I'm asking, why is it sealed?

13 MR. HYMAN: Yeah, except that, Your Honor, we
14 think that the discovery issues in connection with Chapter
15 15s are different than they are in a typical 7 and a typical
16 11. We reserve our right to make arguments as to whether
17 those documents should be submitted or not.

18 But ultimately, you will be the final arbiter of
19 that. And if you determine that those documents should be
20 turned over, they would be turned over just to Valet and
21 they would not be publicly filed on the docket.

22 THE COURT: Well, it depends on if you're asking me
23 to make a decision, that presents another hurdle as to US
24 courts. Again, I know there are instances where sealing is
25 appropriate, but there's a need to justify it, and I just

1 haven't gotten that justification.

2 MR. HYMAN: I appreciate that. And I am willing
3 to walk Your Honor through the redacted version, if it's
4 something that you're interested in considering. We have
5 put --

6 THE COURT: But if you redact it, presumably you'll
7 be applying a standard for redacting it and saying these
8 things should be confidential and what are they and why are
9 they confidential?

10 MR. HYMAN: Except it will -- Your Honor has -- is
11 the open, the fulsome Driver affidavit, what we would
12 propose to do is share a version of that with you, which
13 highlights those provisions that we seek to redact and
14 explain to you why we seek to redact those.

15 THE COURT: That's what I'm looking for, is the
16 explanation. I thought that's what we were going to get to
17 today, frankly.

18 MR. HYMAN: Yeah, and we're willing to do that.
19 My point only, Your Honor, was to the extent that there is,
20 you know, ultimately determination by this Court that it
21 will not permit the motion to file under seal, we will
22 promptly file a revised --

23 THE COURT: Well, I can't grant it now because I
24 haven't been given a justification to grant it. So if
25 you're asking for a ruling, if I was asked to rule, now I

1 would deny it. And so, then you would have to figure out
2 what you wanted to do. And again, I don't like to stand on
3 ceremony. That's why I was giving you an opportunity to
4 sort of marshal the information and come back with
5 additional information so I could really jump to the merits
6 of what it is you're trying to seal.

7 But if you are what you're saying is you want me
8 to deny the motion so that then you'll try to come up with a
9 sealed, a redacted version of this and then justify what's
10 redacted, we can do it that way. I was trying to sort of
11 skip the procedural process here and deny the motion sort of
12 mechanically. But if that's where we are, then that's where
13 we are.

14 MR. HYMAN: Your Honor, I don't want to waste the
15 Court's time. I'm happy to walk the Court through those
16 provisions that we propose to redact, and everything else we
17 propose to file --

18 THE COURT: Well, we've got a thousand pages.

19 MR. HYMAN: Okay.

20 THE COURT: I'm not doing that without a brief that
21 explains what it is you want to redact and it's a brief that
22 gives notice to the other side of what it is you want to
23 redact. And I don't have that.

24 MR. HYMAN: Okay. We have engaged in
25 conversations with the -- with Valet over the course of the

1 last couple of days. I think both parties have acted in
2 good faith, and we did try to reach a resolution, as we
3 suggested we would in our filing at the end of last week.
4 We have proposed a redacted version. We have tried to
5 explain the types of information that we are redacting and
6 the broad categories, but we haven't had much success. And
7 I don't think that we will have much success ultimately
8 there. So --

9 THE COURT: All right. So let me hear from the
10 other side.

11 MS. SCHWEITZER: Thank you, Your Honor. Lisa
12 Schweitzer for Cleary Gottlieb for Valet. Your Honor, quite
13 correctly, we share your frustration on where we're at right
14 now. I think Your Honor was quite clear at the last hearing
15 of saying what the law clearly says, which is that under
16 107, you have to -- the presumption is that evidence will be
17 publicly available unless you make a showing, and as I
18 believe as Judge Glenn had said in the Motors case, that
19 it's not just lawyers arguing about what they would like to
20 seal, but you need evidence.

21 And Your Honor gave the Debtors an opportunity to
22 put more information in. What they came up with was this
23 Newman declaration, which is vague and certainly at best and
24 not focused on the declaration at hand. It says, "Under
25 certain circumstances, these are the sorts of things I would

1 seal."

2 And as you saw from our own lawyer declaration, in
3 fact, Guernsey is just like here, which is exceptional. And
4 so, I'd be happy to go through the law, but I'm not really
5 being asked to (indiscernible) law. What I would say as a
6 holistic matter is that this is concerning to us as the
7 start of the case and as a course of conduct.

8 And you'll remember that the other thing that the
9 Debtors have asked for is that we not be able to execute on
10 our judgment or even get to the point of a judgment being
11 rendered because of this larger case dynamic. And they're
12 slow walking us, right, that Your Honor gave them another
13 opportunity to come back to put in supplemental information.
14 And what they're saying at this hearing is, give us a third
15 bite at the apple, but it's a fourth bite at the apple.

16 And what we had also done just for completeness of
17 this story is we sent them a list of document requests. We
18 said, we'll send you a formal request, but let's just cut to
19 the chase. We understand you're so focused on this
20 declaration. Give us some of these core documents. Give us
21 the funding agreement. Give us the list of creditors. Give
22 us the list of where your bank accounts are.

23 And we were told with no further explanation,
24 that's all going to have to wait for (indiscernible)
25 discovery. What we're also concerned about is in this

1 redaction, it's like, oh, we're not giving you financial
2 information. We're not giving you this. So this is really
3 just the canary in the coalmine right now, is where we're at
4 in this case.

5 THE COURT: All right. Well, the canary's not
6 fairing particularly well from where I sit. I am
7 frustrated. I take very seriously the procedures of other
8 courts. And so, I certainly didn't want to willy-nilly say
9 you haven't met your burden without trying to flesh out the
10 issues, but I've been given nothing to work with, so I'm
11 denying the motion.

12 And so, I don't really get what's going on here,
13 but if this is the way the case is going to go, we can do it
14 the easy way, we can do it the hard way. It's up to you.
15 So this is not value added, frankly, in terms of trying to
16 advance the ball and get things done.

17 And I already expressed a concern that I didn't
18 see any way we -- I was concerned, and didn't see any way
19 we'd get to July, if, for recognition. At this rate, we'd
20 be lucky to get done in July of 2025. So I don't -- that
21 declaration didn't answer any of the question that I posed
22 as to why something -- there's a thousand pages here.

23 And so, one would expect to get in response to
24 that, here is the kind of confidential information. Here is
25 the filing we made in Guernsey. Even if you submitted it

1 under seal saying we can't share it with somebody because we
2 filed it under seal there, I have nothing. I have nothing.
3 So I'm going to deny it.

4 And you can take your binder back and I won't
5 consider these until you make an application and that's
6 proper and justifies it and is transparent. And if this is
7 information you need for recognition, then you're going to
8 need to think hard about what it is you're going to try to
9 do, because from where I can see -- from what I can see,
10 this is kind of -- I don't know if it's the case, but it's
11 certainly crucial to the case, it would seem to be, in terms
12 of what was presented in Guernsey.

13 But again, I -- there's a lot I don't know. And
14 so, all I am sort of mandated to do is to decide what's in
15 front of me. So what I have in front of me is this motion
16 to seal. I have a thousand plus pages. What I originally
17 had wasn't sufficient. I asked for more information. I
18 really haven't gotten much more information.

19 I still -- it's still not justified. So I don't
20 know what else to do other than to deny it without
21 prejudice. You want to make another run at it, then you can
22 make another run at it. I think now this is the second time
23 I've sort of explained what I want, and so, we'll take it
24 from there.

25 And certainly, it's been my experience in this

1 Court that folks are -- experienced practitioners are pretty
2 practical about trying to move cases forward, particularly
3 when they're asking for things to be done at a very prompt
4 clip. That sort of goes part and parcel with asking the
5 Court to jump through hoops, when I have 50 million other
6 things going on.

7 So this is really not a productive use of my time
8 or your time. So I've sandwiched you in between a hearing
9 that started this morning and is going to continue this
10 afternoon. So this is a half an hour of my life I'm never
11 getting back, but you aren't either.

12 So help me to help you. We should be having
13 meaningful discussions about what it is you're going to try
14 to prove for recognition, what kind of discovery you need to
15 make available for other folks. They really are not in much
16 of a position to talk about whether recognition is
17 appropriate unless they have sufficient information about
18 the Guernsey proceedings.

19 And if there truly are confidential information
20 that shouldn't be on the public record, then we need to
21 identify what it is in terms of categories and case law to
22 justify that, and certainly that's the way to meaningfully
23 move the ball forward.

24 So I don't know what you want me to do with the
25 binder, if you want me to give it back to you, if you want

1 me to hold onto it for now, for future reference. I'm happy
2 to do whatever. It's not on the docket. It won't be on the
3 docket by virtue of my motion, but also, it won't be public,
4 it just won't be anything. It'll be something that exists
5 outside the context of the case for the moment.

6 MR. HYMAN: We will -- we can take the binder
7 back, Your Honor. We do appreciate you spending the time
8 and we greatly apologize. I will say that what we had hoped
9 to accomplish today was walk you through our proposed
10 submission, which --

11 THE COURT: But I don't have a submission. I have
12 -- I mean, I don't understand what that means. So I have a
13 declaration of Mr. Newman, and it's four pages with a
14 signature page. It doesn't walk through the declaration or
15 the exhibits, which are more than a thousand pages. It
16 makes -- it does provide some information generally about
17 Guernsey law, information put for the (indiscernible) will
18 often be commercially sensitive. It talks in generalities.
19 I don't have a proposed redacted version of this.

20 MR. HYMAN: We have one with us, but --

21 THE COURT: How do you think that I prepare for
22 these hearings? Do you think that I'm -- I am able to go
23 through a thousand pages page by page for the first time on
24 the bench without any briefing as to what your organizing
25 principles are for redaction?

1 MR. HYMAN: Your Honor --

2 THE COURT: Do you think -- you must think I have a
3 different job than I have. That's not my job.

4 MR. HYMAN: I appreciate it. The actual
5 redactions are quite minimal. The thousand pages is --

6 THE COURT: I know, but I don't have them.

7 MR. HYMAN: I understand. We were going to
8 present that to you, Your Honor, today. We've been trying
9 to negotiate. We didn't get an opportunity to have that
10 submitted earlier. We apologize. We didn't anticipate that
11 it would take a lot of time today. But we take your
12 comments and we will --

13 THE COURT: Well, you know, again, I don't have
14 anything to go through, so and I don't, so I'm not -- I've
15 got another case right after you, and then I've got to
16 return to the case from this morning. I don't -- I get
17 ready for hearings. I expect people to get ready before
18 hearings.

19 So your motion is denied and I'd ask that Valet
20 submit a proposed order, so that without prejudice to you,
21 take another shot at it. But I, at this point, I don't see
22 any way in which July is happening. We've got to get -- if
23 the -- if you're -- in talking about the case, if your
24 greeting requests for basic information with the
25 (indiscernible) were not -- that's not likely to expedite

1 things, either, for a hearing in July.

2 So what -- we'll see where it goes. I don't think
3 I entered the order on scheduling. I want to see how today
4 goes. I'm not going to enter it now. So you tell me what
5 you want to do next steps.

6 THE COURT: Your Honor, we're going to file a
7 revised declaration of Malcolm Cohen that doesn't rely on
8 the Driver affidavit. We want to cooperate with Valet and
9 other parties in interest regarding discovery requests, but
10 we want to do it in the context of formal discovery, not
11 informal discovery.

12 We want to be upfront and we are not trying to
13 play hide the ball. But at the same time, we're trying to
14 predict the procedures in Guernsey and protect the
15 obligations of --

16 THE COURT: But that's where you don't -- I don't -
17 - you don't have me. I'm not there, because the Guernsey
18 proceedings, as far as I know, the protection is something
19 that you ask for and they gave you in a one-line order. So
20 I'm not sure I'm protecting the Guernsey proceedings if I
21 sealed this. I am protecting what you want protected,
22 without justification.

23 MR. HYMAN: We intend to file a detailed
24 declaration of Matthew Newman describing the procedures in
25 Guernsey in detail. He will certainly be here in the

1 courtroom for testimony at the appropriate time, as will the
2 joint administrators. And we intend to be upfront, Your
3 Honor.

4 We will rectify this. We will file a revised
5 version of the declaration in days, and we look forward to
6 sometime shortly after that, hopefully sitting down for a
7 scheduling conference on discovery and how we ultimately get
8 to a recognition there.

9 THE COURT: All right. And if you file a motion to
10 seal certain aspects of it, it needs to explain what it is
11 that's being sealed, how much of the declaration is being
12 sealed, what are the guiding principles for it and authority
13 for that, whether it's Guernsey law, whether it's -- if it's
14 confidential business information, why it's confidential
15 business information. So do you want a date or do you want
16 to sort of reassess and then ask for a date subsequent to
17 right now?

18 MR. HYMAN: Yeah, I don't anticipate the new --
19 the revised declaration, Your Honor, having any references
20 to any information that needs to be filed under seal.

21 THE COURT: But we're still going to end up having
22 to deal with whether this is under seal or not in terms of
23 discovery, right? So somebody's going to have to use a
24 thinking brain to go through and decide what can and can't
25 be disclosed.

1 MR. HYMAN: Perhaps. And we've already done that.
2 The bulk of that material can be disclosed, and we intend to
3 disclose it.

4 THE COURT: Then it should be disclosed, so --

5 MR. HYMAN: But what we wanted to do today, Your
6 Honor, is walk you through a revised binder that shows. And
7 I understand you've got time limitations, and I'm not trying
8 to talk you into doing that today.

9 THE COURT: Well, that's not the way we do things
10 here. It's -- and everybody knows that, and I'm not telling
11 you anything -- when was the last time you showed up at a
12 hearing and you say, Judge, I have some things I need you to
13 look at now for the first time, and it's a whole binder.
14 Yeah, I haven't seen it before. Let's -- it doesn't work
15 that way.

16 That's why we took a break. And so, you submitted
17 something. I looked at it and didn't find it to be very
18 helpful. I assume that if you wanted to submit a proposed
19 revised redacted set of materials, you would do that, with a
20 submission explaining why it's redacted.

21 So I am -- I don't see any way we're not going to
22 end up there. So I would suggest that you do, whether it's
23 in a motion to seal or whether it's in some other motion for
24 a protective -- whatever it is, that you tee up what it is
25 that you want to file and provide the redacted version to --

1 on the docket. And then people at least also have an idea
2 of what it is they don't have, and then we can have a much
3 more intelligent discussion.

4 MR. HYMAN: We're willing and intending to
5 disclose the bulk of that information. To the extent that
6 there is other information that was not relied on in
7 connection with the Guernsey proceeding, we anticipate
8 discussing that through the discovery process, and either
9 disclosing it or being in front of Your Honor.

10 THE COURT: We'll get there. Again, I still don't
11 have any sense of what the information is and the
12 justification for the information, so I can't really even
13 offer any guidance other than to say that process wise, we
14 are where we need to be to make any of those determinations.

15 MR. HYMAN: I appreciate that.

16 THE COURT: All right.

17 MR. HYMAN: I just -- my last comment is, I think
18 that we can avoid the need to revisit this and go through a
19 motion to seal, if it's not on the docket, and we anticipate
20 dealing with that in discovery. That was my point.

21 THE COURT: We'll see.

22 MS. SCHWEITZER: Your Honor, just to preview a
23 couple of more things, which is that at the last hearing on
24 the (indiscernible), we had talked about handing up a
25 stipulation that memorializes what was agreed to at the

1 hearing. And so, we had just executed that, Counsel, I
2 don't know if you prefer to have us --

3 THE COURT: Sure. That's fine. Obviously, you'll
4 send it to chambers as well. So I know -- if I remember
5 this correctly, I think Judge Glenn recently confronted a
6 similar issue where he was asked to seal something that was
7 in front of the District Court, and I think it was Judge
8 Rakoff. And he said, if you want to stay, you should go
9 talk to the judge in question, since it's here in the
10 Southern District of New York.

11 And frankly, I'm inclined to follow the same
12 procedure. So you have time to address it. And in terms of
13 what's going on in that case and how it'll affect things,
14 that judge is in sort of a good position to make that
15 assessment. So I would think that makes sense. Anybody
16 wishes to chime in one way or the other on that?

17 MS. SCHWEITZER: Right. So Your Honor, I mean,
18 just to address that, that was just wanting to put the
19 milestones out there, which was the agreement here, was that
20 we'll tell the judge, don't enter it before July 10th, and
21 then all rights are reserved.

22 THE COURT: Right.

23 MS. SCHWEITZER: But we would -- given what we're
24 seeing today, we would -- just to be clear, we would oppose
25 a further request at this point for a further extension

1 because this is again this mystery reason that we don't have
2 to litigate today. But just so everyone's on notice, that
3 we wouldn't just roll over and consent to a further
4 extension, given what has happened today, and we're
5 perfectly happy to go to the other judge. It's going to be
6 the same issue in the end of the day, which is, if there is
7 a reason it needs to be extended or there needs to be a
8 stay, a showing has to be made.

9 THE COURT: And frankly, you may -- you might reach
10 a similar agreement as you did here in the context of that
11 proceeding, if you're talking to that judge, where you don't
12 need to stand on ceremony, where the judge might say, well,
13 I have a six-week criminal trial that's going to extend July
14 and August, I might -- the people are very nice about
15 getting to you until later, where the practicalities of
16 things outstrip the need to fight about the actual legal
17 rights. So but that Court is certainly in a better position
18 to make that call than I am.

19 MR. BLACKMAN: Jonathan Blackman, Your Honor.
20 Just on that point is, as we explained to the Court last
21 time that our reply papers that on our motion petition to
22 enforce the arbitrarily order due on June 18. We're going
23 to filing them. At that point, essentially, the matter will
24 be fully briefed.

25 And pursuant to stipulation, we'll tell the Judge

1 that the parties have agreed and the Court is ordered, that
2 nothing be done until July 10. And after that, we'll see
3 where we are. But I mean, we don't want to use is clearly
4 here and sort of delay in which nothing has happened since
5 the first day hearing, to artificially extend the time for
6 Judge Broderick to rule. And we'll take it up with him.
7 You know, he takes it up with you.

8 THE COURT: Yeah, no, again, I thought we put some
9 mileage on this case today in trying to resolve some of
10 these issues, but we haven't. So I don't know -- and again,
11 I don't delude myself to thinking that I know exactly what's
12 going on in any case. I never do. I'm always the last one
13 to the party, and I only see the bit of the iceberg above
14 the water line.

15 So I don't know, and why certain things happen are
16 often mysterious, so I go back to first principles. And so,
17 what I have is a motion to seal. And so, I've denied that.
18 And again, I don't -- I would normally -- so the issue of a
19 stay is a bankruptcy question. But it is sort of an unusual
20 (indiscernible), but it's a circumstance where I have sort
21 of more a part of the same court.

22 And so, given that Judge Broderick may have
23 scheduled things that sort of make this easy to figure out
24 how long it's going to be until he gets to it, to me, it
25 makes sense to have that conversation in front of him in the

1 first instance.

2 So and you can certainly tell him that if he wants
3 me to make a ruling as a bankruptcy judge as to the
4 appropriateness of the stay, then I'm happy to do that. I'm
5 not trying to export my work to him, I'm just trying to be
6 respectful of his docket and what he has going on. So I
7 trust you will convey that message when you finally do chat
8 with him.

9 MR. BLACKMAN: We certainly will, Your Honor.

10 MR. HYMAN: We will, Your Honor, certainly. We're
11 hoping that we can continue to do this on a consensual
12 basis. Nobody's intent is to delay, delay, delay. We will
13 respond to discovery requests as soon as we get them. And
14 we will file a revised declaration promptly next week.
15 There is no pushback on this. We are trying to get to July
16 10th if we can get to July 10th.

17 THE COURT: All right.

18 MR. HYMAN: We will --

19 THE COURT: It's already July --

20 MS. SCHWEITZER: June--

21 THE COURT: I'm sorry, June 13th, so I haven't
22 entered the order.

23 MS. SCHWEITZER: Right.

24 THE COURT: And so, frankly, I don't know that
25 based on what I've seen that I should enter the order, that

1 it's a meaningful thing to do at this point. Anybody want
2 to be heard on that?

3 MS. SCHWEITZER: So I think, Your Honor, we intend
4 to serve discovery pretty much immediately Friday or Monday.
5 We'll have our discovery requests out. And so, it will be
6 for the Debtor to discuss when they can comply with them.
7 Certainly, there should be no surprises as to why we sent an
8 early list of that they can start doing their work.

9 And I think that hopefully they're going to be
10 cooperative and compliant with that discovery. And I think
11 that we have been pretty clear in terms of all these sealing
12 issues that, you know, that there's three buckets. There's
13 non-confidential stuff that becomes public. There's -- just
14 because it's confidential, there may be a question, we
15 haven't gotten to it yet, of whether you seal it. But that
16 doesn't mean Valet doesn't get it.

17 And we can get those types of things to a
18 confidentiality agreement, and we've been happy to discuss
19 that. We haven't gotten to there yet. And if there's
20 things that really, really are not appropriate, the
21 privileged or whatever, or some smaller group, we're happy
22 to work through those things. And I'd hope that we can work
23 constructively with the Debtors. And if not, I expect we
24 would come back to you --

25 THE COURT: You will find your way to the

1 courthouse (indiscernible) --

2 MS. SCHWEITZER: Sooner rather than later.

3 THE COURT: Yeah.

4 MS. SCHWEITZER: Hopefully with a narrower set of
5 issues to be presented.

6 THE COURT: So should we set a control date? So I
7 was thinking of Monday the 24th, which is, you know, a
8 little more than 10 days. And that sort of trying to be
9 respectful of the fact that there's been a request to set a
10 hearing date, and I haven't set one. And so, we can talk
11 about where we are, including discovery issues and including
12 setting a hearing date.

13 If people think that's not enough time, then we
14 can set it later in the week. But I'm just throwing that
15 out there for what it's worth.

16 MS. SCHWEITZER: That works for me.

17 MR. HYMAN: Yeah, I think we'd be happy to do it
18 on a more expedited basis than that, Your Honor. I think if
19 we're going to be getting --

20 THE COURT: I --

21 MS. SCHWEITZER: We were happy to do it today.

22 THE COURT: I am not moving it up because today was
23 designed to get the ball rolling, and it didn't happen. So
24 and that's entirely something within the control of you and
25 your client. And so, I'm not doing it soon. It's not

1 happening. So I can give you two o'clock on the 24th. And
2 we'll consider it a case conference. And on whatever we
3 need to discuss, including scheduling and discovery, and
4 that'll -- you know, we'll talk about what July or more
5 likely sometime after July looks like. And if we get a
6 scheduling order after that, then fine. If we don't, then
7 we'll just keep figuring it out as we go.

8 MR. HYMAN: Yeah, it's just -- I don't think we're
9 going to be able to hold the 10th given the 21-day notice
10 period, if (indiscernible) --

11 THE COURT: No, I don't think you are.

12 MR. HYMAN: Yeah.

13 THE COURT: I don't think you are. I sort of held
14 out the possibility that today might -- the end of things
15 might come into focus, that that was still possible, but
16 those things haven't come into focus, so I don't think the
17 10th is going to work at all. So we'll talk about what the
18 dates are, and on the 24th, we'll see where we are. All
19 right?

20 MS. SCHWEITZER: Thank you, Your Honor.

21 MR. HYMAN: All right, Your Honor.

22 THE COURT: Thank you.

23 (Whereupon these proceedings were concluded at

24 2:56 PM)

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I N D E X

RULINGS

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Motion to seal is denied

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sonya

Ledanski Hyde

Digitally signed by Sonya
Ledanski Hyde
DN: cn=Sonya Ledanski Hyde, o,
ou, email=digital@veritext.com,
c=US
Date: 2019.06.17 16:26:02 -04'00'

Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: June 17, 2019

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